

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAX PIERSON,

Plaintiff,

v.

PATRICK SCOTT, et al.,

Defendants.

No. C 06-6503 PJH

ORDER DENYING MOTION TO REMAND

Plaintiff's motion to remand came on for hearing before this court on January 17, 2007. Plaintiff appeared by his counsel Daniel Dell'Osso and Brian J. Malloy, and defendant Ford Motor Company appeared by its counsel H. Grant Law and Amir M. Nassihi. Having read the parties' papers and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby DENIES the motion as follows and for the reasons stated at the hearing.

"Commencement" under 28 U.S.C. § 1446(b) "refers to when the action was initiated in state court, according to state procedures." Bush v. Cheaptickets, Inc., 425 F.3d 683, 688 (9th Cir. 2005). The general rule in California is that a civil action is commenced by filing a complaint with the court. Cal. Civ. P. Code §§ 350, 411.10. However, an amended complaint that adds a new defendant generally does not relate back to the filing of the original complaint. Hawkins v. Pacific Coast Bldg. Products, Inc., 124 Cal. App. 4th 1497, 1503 (2004).

1 The allowance of amendment and relation back “does not depend on whether the
2 parties are technically or substantially changed; rather, the inquiry is as to whether the
3 nature of the action is substantially changed.” Diliberti v. Stage Call Corp., 4 Cal. App. 4th
4 1468, 1470 (1992). Here, when plaintiff amended the complaint to add Ford as a
5 defendant, he added independent claims against a new defendant. Thus, under California
6 law, a new action “commenced” with the filing of the amended complaint. The case
7 became removable when plaintiff dismissed the California defendant or defendants on
8 October 10, 2006. Because less than one year had elapsed between the time of the filing
9 of the amended complaint (March 10, 2006) and the filing of the notice of removal (October
10 18, 2006), the removal was not untimely under 28 U.S.C. § 1446(b).

11
12 **IT IS SO ORDERED.**

13 Dated: January 17, 2007



PHYLLIS J. HAMILTON
United States District Judge